

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1378 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MALKESH JAYANTILAL VYAS

Versus

A M C

Appearance:

MR KS ACHARYA for Petitioner

MR BP TANNA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/01/2000

CAV JUDGEMENT

This is a petition under Articles 14, 16 and 226
of the Constitution of India, read with the provisions of
the Bombay Provincial Municipal Corporation Act and Rules
and Regulations of the said Corporation for appropriate
writ, order or direction directing the respondent to give

appointment to the petitioner to the post of Sanitary Sub-Inspector as per Annexure 'A', being dependant of the deceased who died in 1984 while in employment of the respondent. The petitioner has also prayed for appropriate writ, order or direction directing the respondent-Corporation to call the petitioner for the interview in connection with the advertisement issued as per Annexure 'B'.

2. The petitioner has contended that his father was working in the respondent-Corporation, being the Corporation incorporated under the Bombay Provincial Municipal Corporation Act, in Health Department, in Parvatibai Hospital, Dariapur, as compounder. That he died on 1.10.84 while he was in service. That the respondent-Corporation has passed a resolution dtd.2.12.75 and another resolution dtd.19.4.77. That according to the said resolutions, the respondent-Corporation is required to make appointment of the dependants of the deceased employees who died while in service on compassionate grounds. The petitioner claims that he is duly qualified for being appointed as Sanitary Sub-Inspector and, therefore, he should be appointed accordingly by the respondent in the employment. The petitioner has further contended that he is also eligible for being considered for the post advertise in terms of advertisement at Annexure 'B'. The petitioner has tried to get those two positions but he failed and, therefore, the petition has been filed for the aforesaid relief.

3. Rule was issued and the respondent-Corporation has filed affidavit-in-reply of Dr.P.K.Makwana, working as Medical Officer in the respondent-Corporation at page.20. There it has been contended that, as per the policy of the Corporation, the petitioner could be appointed in Class-IV employment and he was not eligible for being considered for the post under the advertisement and, therefore, the petitioner is not entitled to claim the said relief, and the petition may therefore be dismissed with cost.

4. I have heard learned advocates for the parties and have also perused the papers.

5. As stated above, the petitioner's contention is that his father died while in service and that fact has not been disputed to any extent.

6. The petitioner now claims that he should be appointed in Class-III employment. The affidavit in

para.3 makes it clear that, as per the policy of the respondent-Corporation, whenever compassionate appointment is made, such appointment is made for Class-IV post only. So this is the policy of the respondent-Corporation as per the affidavit of Dr.P.K.Makwana in para 3 at page.21. Now when a policy has been made by the respondent-Corporation and the policy has not been assailed and the policy has not been found irrational or unreasonable, this Court while undertaking jurisdiction under Article 226 of the Constitution of India, cannot direct the respondent-Corporation to change the policy, therefore, the policy cannot be ordered to be changed by this Court and once the policy has been made and accepted since years by the respondent-Corporation, the petitioner cannot be directed to be appointed in Class III employment by passing the policy of the respondent-Corporation. Therefore that prayer cannot be granted to the petitioner.

7. With respect to the second prayer, the reply is in para.4 of the affidavit of Dr.P.K.Makwana. There the petitioner has contended that he was placed at Sr.No.52 and a person who was at Sr.No.80 in the list was considered and appointed. The reply has been given in para.4 of the affidavit. There it has been contended that the fact is not accepted. Even the appointment given to Mr.R.C.Jani at Sr.No.80 was a different consideration. That the Industrial Tribunal considered a reference and on the strength of the orders passed by the Labour Court in Reference (IT) No.423 of 11983 and Reference (IT) No.2 of 1985 the appointment was required to be given to Mr.R.C.Jani. Therefore that appointment was given on the strength of the award of the Labour Court and, therefore, that appointment cannot be equated with normal appointment. Therefore, it cannot be said that a person at Sr.No.80 had been appointed and therefore the seniority list had been operated upto Sr.No.80 without appointing the petitioner who was at Sr.No.52.

8. Now if these two contentions are not in favour of the petitioner and when there is no other contention raised by the petitioner, in that view of the matter, the petitioner cannot get any relief in this petition.

9. The petitioner has also contended that he should be appointed for the post as per Annexure 'B' yet he does not show as to how he is entitled to be considered at this stage for that post and, therefore, even that relief cannot be extended to the petitioner.

10. Any way, the averments made in the petition have been properly and duly answered by the respondent-Corporation by way of affidavit of Dr.P.K.Makwana, and there is no other contention raised by the petitioner. In absence of any other contention, petitioner is not entitled to get any relief and therefore the petition deserves to be dismissed.

11. In view of the above facts and circumstances of the case, the petition is ordered to be dismissed. Rule is discharged with no order as to costs.

(D.P. Buch, J.)

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